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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 KIM SHELBY, an individual,

15 Plaintiff,

16 v.

17 TUFAMERICA, INC., a New York
18 Corporation; and DOES 1 through 10,

19 Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR

1. COPYRIGHT
INFRINGEMENT
2. MISAPPROPRIATION OF
LIKENESS

Jury Trial Demanded

20 Kim Shelby, by and through its undersigned attorneys, hereby prays to this
21 honorable Court for relief based on the following:

22 **JURISDICTION AND VENUE**

- 23 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
24 *et seq.*
- 25 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
26 1338 (a) and (b).

1 circumstances, including, but not limited to, full knowledge of each violation of
2 Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

3 **CLAIMS FOR RELIEF**

4 9. Plaintiff is a gospel singer who owns original songs including but not
5 limited to songs titled "We as One," "I'm Glad About It," "I'll do Anything," "Live
6 for Christ," "Anointing," and "Oh Yes You Do" (collectively "Subject Songs") that
7 have been registered with the United States Copyright Office prior to the acts of
8 infringement alleged herein under registration numbers: SRu 212-173, SRu 215-589,
9 and SRu 218-666.


10 10. Plaintiff is informed and believes and thereon alleges that TUFAMERICA,
11 DOE Defendants, and each of them distributed and/or sold music albums ("Subject
12 Product") including songs that are substantially similar, if not identical, to the
13 Subject Songs without Plaintiff's authorization, including but not limited to an
14 album sold by Amazon under ASIN B004LP1UP4 titled "I'm Glad About It: Classic
15 Gospel Tracks by Kim Shelby," with the record label for that album listed as
16 TUFAMERICA. A screen capture of this album is included below:

17
18
19
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24 ///

25 ///

Subject Product

I'm Glad About It: Classic Gospel Tracks
Kim Shelby (Artist) | Format: Audio CD
[Be the first to review this item](#)



[See all formats and editions](#)


Audio CD

Currently unavailable.
We don't know when or if this item will be back in stock.

[Add to Wish List](#)

[Have one to sell?](#) [Sell on Amazon](#)

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Editorial Reviews

I'm Glad About It: Classic Gospel Tracks by Kim Shelby

Track Listings

1. We As One
2. I'm Glad About It
3. Jesus Is The Answer
4. I'll Do Anything
5. Live For Christ
6. Aninting
7. Never Gonna Stop
8. Oh Y' You Do

Product Details

Audio CD (January 31, 2011)
Label: Tuff City
Run Time: 31 minutes
ASIN: B004LP1UP4
Average Customer Review: [Be the first to review this item](#)

11. Plaintiff is informed and believes and thereon alleges that TUFAMERICA, DOE Defendants, and each of them distributed and/or sold unauthorized albums bearing her name and including the Subject Songs.

FIRST CLAIM

(For Copyright Infringement - Against All Defendants, and Each)

12. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

13. Plaintiff is informed and believes and thereon alleges that one or more of the Defendants manufactures albums and/or is a record label.

1 14. Plaintiff is further informed and believes and thereon alleges that said
2 Defendants, and each of them, have an ongoing business relationship with Defendant
3 retailers, and each of them, and supplied infringing products to said retailers, which
4 albums infringed the Subject Songs in that said albums were comprised of
5 unauthorized reproductions of the Subject Songs.

6 15. Plaintiff is informed and believes and thereon alleges that Defendants, and
7 each of them, infringed Plaintiff's copyright by creating, making and/or developing
8 directly infringing and/or derivative works from the Subject Songs and by
9 producing, distributing and/or selling Subject Products through a nationwide
10 network of retail stores, catalogues, and websites.

11 16. Due to Defendants', and each of their, acts of infringement, Plaintiff has
12 suffered damages in an amount to be established at trial.

13 17. Due to Defendants', and each of their, acts of copyright infringement as
14 alleged herein, Defendants, and each of them, have obtained profits they would not
15 otherwise have realized but for their infringement of the Subject Songs. As such,
16 Plaintiff is entitled to disgorgement of Defendants', and each of their, profits
17 attributable to the infringement of the Subject Songs in an amount to be established
18 at trial.

19 18. Plaintiff is informed and believes and thereon alleges that Defendants, and
20 each of them, have committed copyright infringement with actual or constructive
21 knowledge of Plaintiff's rights such that said acts of copyright infringement were,
22 and continue to be, willful, intentional and malicious.

23 **SECOND CLAIM**

24 (For Misappropriation of Likeness - Against All Defendants, and Each)

25 19. Plaintiff repeats, realleges and incorporates herein by reference as though
26 fully set forth the allegations contained in the preceding paragraphs of this
27 Complaint.
28

1 20. Plaintiff is informed and believes and thereon alleges that Defendants have
2 and are using Plaintiff's name, identity, voice, likeness, and/or personal information
3 for commercial advantage without Plaintiff's consent.

4 21. Plaintiff is informed and believes and thereon alleges that Defendants have
5 and are appropriating Plaintiff's name, identity, voice, likeness, and/or personal
6 information for commercial advantage by selling Subject Products including, but not
7 limited to an album sold by Amazon under ASIN B004LP1UP4 titled "I'm Glad
8 About It: Classic Gospel Tracks by Kim Shelby," with the record label for that
9 album listed as TUFAMERICA.

10 22. Plaintiff has never granted her consent or authorization in any way to
11 Defendants for the use of her name, identity, voice, likeness, and/or personal
12 information.

13 23. Plaintiff is informed and believes and thereon alleges that Defendants'
14 misappropriation of her name, identity, likeness, and personal information has
15 resulted in injury to Plaintiff.

16 24. Plaintiff is entitled to compensatory and punitive damages due to
17 Defendants' willful appropriation of her name, identity, likeness, and voice.

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff prays for judgment as follows:

- 20 a. That Defendants—each of them—and their respective agents and
21 servants be enjoined from importing, manufacturing, distributing,
22 offering for sale, selling or otherwise trafficking in any product that
23 infringes Plaintiff's copyrights in the Subject Songs;
- 24 b. That Plaintiff be awarded all profits of Defendants, and each of them,
25 plus all losses of Plaintiff, the exact sum to be proven at the time of trial,
26 or, if elected before final judgment, statutory damages as available under
27 the Copyright Act, 17 U.S.C. § 101 et seq.;

- c. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. § 101 et seq. and Cal. Civ. Code § 3344 (a);
- d. That Plaintiff be awarded damages in the amount of the greater of \$750.00 or the actual damages suffered by Plaintiff, in an amount to be determined at trial, as a result of the unauthorized use of Plaintiff's name and likeness as available under Cal. Civ. Code § 3344 (a).
- e. That Plaintiff be awarded punitive damages as available under Cal. Civ. Code § 3344 (a);
- f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- g. That Plaintiff be awarded the costs of this action; and
- h. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Dated: July 6, 2015

DONIGER/BURROUGHS

By: /s/ Stephen M. Doniger
Stephen M. Doniger, Esq.
Frank Gregory Casella, Esq.
Attorneys for Plaintiff